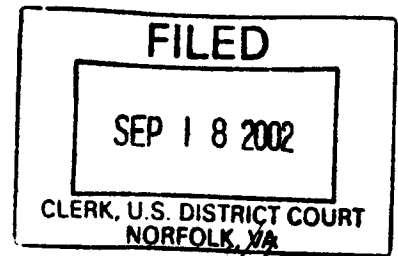


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



YASER ESAM HAMDI,

ESAM FOUAD HAMDI, As Next
Friend of Yaser Esam Hamdi,

Petitioners,

v.

Civil Action No. 2:02cv439

DONALD RUMSFELD,
Secretary of Defense,

COMMANDER W.R. PAULETTE,
Norfolk Naval Brig,

Respondents.

**RESPONDENTS' OPPOSITION TO MOTION TO INTERVENE
BY FRIENDS OF IMMIGRATION LAW ENFORCEMENT**

The Friends of Immigration Law Enforcement (FILE), an organization unconnected to Yaser Esam Hamdi or his next-friend, seeks to intervene in this habeas action as a "party-defendant." For the reasons set forth herein, Respondents Donald Rumsfeld and Commander W.R. Paulette oppose intervention.

The proper party respondent in a petition for writ of habeas corpus is the "person having custody of the person detained." 28 U.S.C. § 2243. Since FILE does not have custody of Hamdi, it is not a proper party respondent. Indeed, FILE lacks Article III standing to intervene in this case in any capacity. Although FILE states an interest in this litigation, that interest is no more concrete than the generalized interests stated by the federal public defender or Christian Peregrim, whom, the

court of appeals held, lacked standing to litigate on behalf of Hamdi. See Hamdi v. Rumsfeld, 2002 WL 1369635 (4th Cir. June 26, 2002). Nor has FILE shown that it meets any of the conventional requirements for party intervention, see Fed. R. Civ. P. 24, to the extent that Rule 24 even applies to habeas actions.

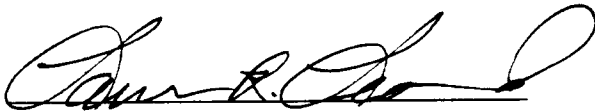
FILE seeks intervention in this case in order to argue that Hamdi is not a United States citizen. Respondents have contended throughout this litigation that there is no need for a court to resolve whether, or not, Hamdi is in fact a United States citizen, to determine that his present detention is lawful. See, e.g., Respondent's Response to, and Motion to Dismiss, the Petition for a Writ of Habeas Corpus, at 8. Nonetheless, if FILE wishes to present its views to the court on that issue, it may seek to participate as an amicus curiae. The fact that FILE may present its views in an amicus brief is all the more reason not to grant its unusual request to intervene in this habeas litigation as a "party-defendant."¹

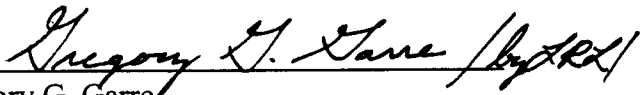
¹ On August 21, 2002, this Court stayed its August 16, 2002 production order and certified the question concerning the sufficiency of the Mobbs declaration for interlocutory appeal pursuant to 28 U.S.C. 1292(b). On September 12, 2002, the Fourth Circuit issued an order granting respondents' interlocutory appeal of this Court's August 16 order. Although respondents hereby oppose FILE's motion to intervene, any consideration of that motion by this court should be reserved pending the outcome of respondent's appeal.

Respectfully submitted,

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United States Attorney

Paul D. Clement
Deputy Solicitor General

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Dated: September 18, 2002

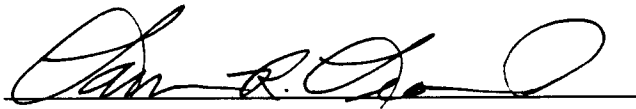
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Respondents' Response to Motion to Intervene by Friends of Immigration Law Enforcement was served, this 18th day of September, 2002, by U.S. mail, first class postage prepaid addressed to:

Larry W. Shelton
Supervisory Assistant Federal Public Defender
Jeremy C. Kamens
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Craig Nelson
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A handwritten signature in black ink, appearing to read 'Lawrence R. Leonard', is written over a horizontal line.

Lawrence R. Leonard
Managing Assistant United States Attorney